

## DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

March 2, 1990



## ALL-COUNTY INFORMATION NOTICE NO. I-14-90


TO: ALL COUNTY WELFARE DEPARTMENTS  
ALL COUNTY COUNSELS  
ALL PROBATION DEPARTMENTS

SUBJECT: SENATE BILL 221 - RESTRAINING ORDERS TO PROTECT  
CHILDREN FROM ABUSE

This is to inform you of the provisions of Senate Bill 221 (Chapter 1409, Statutes of 1989). Effective January 1, 1990 this act authorizes designated judges, commissioners, or referees to orally issue ex parte emergency protective orders, when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member. This law also authorizes the juvenile court, during dependency proceedings, to issue ex parte orders enjoining a parent, guardian or other household member from specified behavior, such as striking the child, or excluding such person from the child's home.

The provisions of this law give police and sheriff's officers the authority to use every reasonable means to enforce the emergency protective order. Such emergency protective orders could enable a child who is receiving child welfare services or who is referred to a county's Emergency Response Program to remain in the home in certain circumstances, rather than be removed. The order is valid until the close of judicial business on the second day of its issue. The bill also provides that the parent or legal guardian of the endangered child who is not a restrained party, or any other person having temporary custody of the endangered child, would be able to apply for a more permanent restraining order.

Enclosed for your reference is a copy of SB 221. If you have any questions regarding this law as it relates to child welfare services, please contact your Adult and Family Services Operations consultant at (916) 445-0623 or ATSS 485-0623.

  
LOREN D. SUTER  
Deputy Director  
Adult and Family Services

Enclosures

cc: County Welfare Directors Association

## Senate Bill No. 221

### CHAPTER 1409

An act to amend Section 546 of the Code of Civil Procedure, and to add Section 213.5 to the Welfare and Institutions Code, relating to court orders.

[Approved by Governor October 2, 1989. Filed with  
Secretary of State October 2, 1989.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 221, Petris. Restraining orders: children.

Existing law requires the presiding judge of the superior court to designate one judge, commissioner, or referee in each county to be available, as specified, to orally issue, by telephone or otherwise, emergency protective orders against domestic violence, as specified, which orders are authorized to be issued at all times when the court is not in session. An emergency protective order against domestic violence expires not later than the close of judicial business on the next day of judicial business following the day of its issue.

This bill would provide that an emergency protective order against domestic violence shall expire not later than the close of judicial business on the 2nd day of judicial business following the day of its issue.

This bill would also authorize the above described designated judges, commissioners, or referees to issue emergency protective orders, as specified, when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate danger of abuse by a family or household member. The bill would provide that the order shall expire not later than the close of judicial business on the 2nd day of judicial business following the day of its issue. The bill would also provide that the parent or legal guardian of the endangered child who is not a restrained party, or any person having temporary custody of the endangered child, would be able to apply for a more permanent restraining order, as specified.

Existing law details the procedures for declaring a minor a dependent child of the juvenile court and authorizes the juvenile court to direct all such orders to the parent, parents, or guardian of a minor as the court deems necessary and proper for the best interests of the minor. A violation of an order of the juvenile court is a contempt.

This bill would authorize the juvenile court, during the pendency of any proceeding to declare a minor a dependent child of the juvenile court, to issue ex parte orders enjoining any parent, guardian, or member of the minor child's household from engaging in specified behavior or activity or excluding any parent, guardian, or member of the minor child's household from the dwelling of a

person having the care, custody, and control of the child, upon a specified showing. The juvenile court would also be authorized, upon notice and a hearing, to issue the above-described orders which orders would remain in effect, in the court's discretion, not to exceed one year, unless otherwise terminated by the court or extended, as specified. The bill would provide that any willful and knowing violation of any of these restraining orders issued by the juvenile court would be a misdemeanor punishable by imprisonment for up to 1 year in county jail, and a specified fine.

This bill would incorporate additional changes in Section 546 of the Code of Civil Procedure, proposed by AB 2089, to be operative only if AB 2089 and this bill are both chaptered and become effective January 1, 1990, and this bill is chaptered last.

Because this bill would authorize the imposition of a longer county jail sentence for violation of the above specified restraining orders issued by the juvenile court than that authorized for criminal contempts generally, it would constitute a state-mandated local program. Additionally, because the bill would impose new duties on police and sheriffs' officers, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

*The people of the State of California do enact as follows:*

SECTION 1. Section 546 of the Code of Civil Procedure is amended to read:

546. (a) The court may issue ex parte any of the orders set forth in subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child. In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

The court may issue an ex parte order pursuant to this subdivision, excluding one party from a residence or dwelling only when the

affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the plaintiff has a right under color of law to possession of the premises.

(b) The presiding judge of the superior court in each county shall designate, not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered person resides.
- (4) The following statement: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your application. To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application."

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while

on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance.

An emergency protective order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue.

The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

(c) A judge, commissioner, or referee designated pursuant to subdivision (b) may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member, based upon an allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders authorized in Section 213.5 of the Welfare and Institutions Code, and may include provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or legal guardian of the endangered child who is not a restrained party. The order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that a child is in immediate and present danger of abuse and that an emergency protective order is necessary to prevent the occurrence or recurrence of abuse. The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered child resides.
- (4) The following statement: "This order will last only until the date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address noted above, when it opens. The advice of an attorney may be sought in connection with the

application for a more permanent restraining order.”

The parent or legal guardian of the endangered child who is not a restrained party, or any person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code when the court opens.

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to any parent or legal guardian of the endangered child who is not a restrained party, if he or she can be reasonably located, or to any person having temporary custody of the endangered child. A copy also shall be filed with the court as soon as practicable after issuance.

The availability of an emergency protective order shall not be affected by the endangered child's leaving the household to avoid abuse.

A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

SEC. 1.5. Section 546 of the Code of Civil Procedure is amended to read:

546. (a) The court may issue ex parte any of the orders set forth in subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child. In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

The court may issue an ex parte order pursuant to this subdivision, excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the plaintiff has a right under color of law to possession of the premises.

(b) The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer or a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered person resides.
- (4) The following statement: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your application. To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application."

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance.

An emergency protective order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue.

The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

(c) A judge, commissioner, or referee designated pursuant to subdivision (b) may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member, based upon an allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders authorized in Section 213.5 of the Welfare and Institutions Code, and may include provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or legal guardian of the endangered child who is not a restrained party. The order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that a child is in immediate and present danger of abuse and that an emergency protective order is necessary to prevent the occurrence or recurrence of abuse. The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered child resides.



(4) The following statement: "This order will last only until the date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address noted above, when it opens. The advice of an attorney may be sought in connection with the application for a more permanent restraining order."

The parent or legal guardian of the endangered child who is not a restrained party, or any person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code when the court opens.

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to any parent or legal guardian of the endangered child who is not a restrained party, if he or she can be reasonably located, or to any person having temporary custody of the endangered child. A copy also shall be filed with the court as soon as practicable after issuance.

The availability of an emergency protective order shall not be affected by the endangered child's leaving the household to avoid abuse.

A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

SEC. 2. Section 213.5 is added to the Welfare and Institutions Code, to read:

213.5. (a) During the pendency of any proceeding to declare a minor child a dependent child of the juvenile court, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or member of the minor child's household from molesting, attacking, striking, sexually assaulting, or battering the minor child or any other minor child in the household; (2) excluding any parent, guardian, or member of the minor child's household from the dwelling of the person who has care, custody, and control of the child upon the same showing as is necessary under the provisions of this chapter relating to dependent children to remove a minor from the custody and control of his or her parents or guardians; and (3) enjoining a parent, guardian, or member of the minor child's household from specified behavior including contacting, threatening, or disturbing the peace of the minor, which

the court determines is necessary to effectuate orders under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a minor a dependent child of the juvenile court pursuant to Section 300.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling only when the evidence affirmatively shows facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

In the case of the issuance of an ex parte order, the affidavit in support of the application for the order shall affirmatively show facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the minor child and such other locations where the court determines that acts of domestic violence or abuse against the minor child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted

pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.6 of the Penal Code.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 546 of the Code of Civil Procedure proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 546 of the Code of Civil Procedure, and (3) this bill is enacted after AB 2089, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.